

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JESSE C. PHILLIPS, B62167,**

**Plaintiff,**

**v.**

**MARC HODGE, *et al.*,**

**Defendants.**

**Case No. 3:13-cv-00069-SMY-PMF**

**REPORT AND RECOMMENDATION**

**FRAZIER, Magistrate Judge:**

Before the Court is plaintiff Phillips’ “Motion for Leave to File Cross-Summary Judgment Motion Against Defendant Martin” (Doc. 155). Phillips previously filed a motion for summary judgment against Martin on August 26, 2013. The motion was denied by Judge Gilbert on October 25, 2013. Phillips now seeks to file a second motion for summary judgment against Martin. District Courts have discretion to permit second or successive motions for summary judgment. *Whitford v. Boglino*, 63 F.3d 527, 530 (7th Cir. 1995). Reasons for granting a second motion for summary judgment include: “(1) an intervening change in controlling law; (2) the availability of new evidence or an expanded factual record; and (3) need to correct a clear error or prevent manifest injustice.” *Id.* (internal quotation marks and citation omitted).

Phillips argues that Martin’s actions were prejudicial and “an attempt to gain an unfair advantage” because Martin filed his motion for summary judgment on the deadline date of October 17, 2014. The April 12, 2013 scheduling order states that discovery is due by September 19, 2014 and dispositive motions are due by October 17, 2014. Martin had the right to file his motion on the deadline date, as did Phillips. Phillips does not argue that there has been an intervening change in controlling law, specific new evidence that would justify summary

judgment, or any need to correct a clear error or prevent manifest injustice. Phillips' motion to file a second motion for summary judgment should therefore be denied.

**SO RECOMMENDED.**

**DATED: December 8, 2014 .**

**s/Philip M. Frazier**  
**PHILIP M FRAZIER**  
**UNITED STATES MAGISTRATE JUDGE**